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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD GRAHAM,)	Case No. CV 11-1829 JPR
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	AFFIRMING THE COMMISSIONER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for Supplemental Security Income ("SSI"). The parties filed a Joint Stipulation on December 14, 2011. The Court has taken the Joint Stipulation under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and this action is dismissed.

II. BACKGROUND

Plaintiff was born on July 2, 1964. (Administrative Record

1 ("AR") 86.) He graduated high school and worked sporadically at
2 various jobs. (AR 98.)

3 On April 16, 2007, Plaintiff filed an application for SSI,
4 alleging that he had been unable to work since the start of the year
5 because of "diabetes, heart condition, seizures, arthritis,
6 schizophrenia." (AR 97.) After Plaintiff's application was denied,
7 he requested a hearing before an Administrative Law Judge ("ALJ").
8 (AR 58.) It was held on November 3, 2008, at which time Plaintiff
9 appeared with counsel and testified on his own behalf. (AR 25-48.)
10 The ALJ determined that Plaintiff was not disabled because he did not
11 have a "severe impairment or combination of impairments," physical or
12 mental. (AR 19.) On January 5, 2011, the Appeals Council denied
13 Plaintiff's request for review. (AR 1-5.) This action followed.

14 **III. STANDARD OF REVIEW**

15 Pursuant to 42 U.S.C. § 405(g), a district court may review the
16 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
17 findings and decision should be upheld if they are free from legal
18 error and are supported by substantial evidence based on the record as
19 a whole. § 405(g); Richardson v. Perales, 402 U.S. 389, 401, 91 S.
20 Ct. 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d
21 742, 746 (9th Cir. 2007). Substantial evidence means such evidence as
22 a reasonable person might accept as adequate to support a conclusion.
23 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028,
24 1035 (9th Cir. 2007). It is more than a scintilla but less than a
25 preponderance. Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc.
26 Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
27 substantial evidence supports a finding, the reviewing court "must
28 review the administrative record as a whole, weighing both the

1 evidence that supports and the evidence that detracts from the
2 Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th
3 Cir. 1998). "If the evidence can reasonably support either affirming
4 or reversing," the reviewing court "may not substitute its judgment"
5 for that of the Commissioner. Id. at 720-21.

6 **IV. THE EVALUATION OF DISABILITY**

7 People are "disabled" for purposes of receiving Social Security
8 benefits if they are unable to engage in any substantial gainful
9 activity owing to a severe physical or mental impairment that is
10 expected to result in death or which has lasted, or is expected to
11 last, for a continuous period of at least 12 months. 42 U.S.C.
12 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
13 1992).

14 A. The five-step evaluation process

15 The Commissioner (or ALJ) follows a five-step sequential
16 evaluation process in assessing whether a claimant is disabled. 20
17 C.F.R. § 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th
18 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the
19 Commissioner must determine whether the claimant is currently engaged
20 in substantial gainful activity; if so, the claimant is not disabled
21 and the claim is denied. § 416.920(a)(4)(i). If the claimant is not
22 engaged in substantial gainful activity, the second step requires the
23 Commissioner to determine whether the claimant has a "severe"
24 impairment or combination of impairments significantly limiting her
25 ability to do basic work activities; if not, a finding of
26 nondisability is made and the claim is denied. § 416.920(a)(4)(ii).
27 If the claimant has a "severe" impairment or combination of
28 impairments, the third step requires the Commissioner to determine

1 whether the impairment or combination of impairments meets or equals
2 an impairment in the Listing of Impairments ("Listing") set forth at
3 20 C.F.R., Part 404, Subpart P, Appendix 1; if so, disability is
4 conclusively presumed and benefits are awarded. § 416.920(a)(4)(iii).

5 If the claimant's impairment or combination of impairments does not
6 meet or equal an impairment in the Listing, the fourth step requires
7 the Commissioner to determine whether the claimant has sufficient
8 residual functional capacity ("RFC")¹ to perform his past work; if so,
9 the claimant is not disabled and the claim is denied.

10 § 416.920(a)(4)(iv). The claimant has the burden of proving that he
11 is unable to perform past relevant work. Drouin, 966 F.2d at 1257.
12 If the claimant meets that burden, a prima facie case of disability is
13 established. Id. If that happens or if the claimant has no past
14 relevant work, the Commissioner then bears the burden of establishing
15 that the claimant is not disabled because he can perform other
16 substantial gainful work available in the national economy.
17 § 416.920(a)(4)(iv). That determination comprises the fifth and final
18 step in the sequential analysis. § 416.920; Lester, 81 F.3d at 828
19 n.5; Drouin, 966 F.2d at 1257.

20 B. The ALJ's application of the five-step process

21 At step one, the ALJ found that Plaintiff had not engaged in any
22 substantial gainful activity since April 16, 2007, the date he applied
23 for SSI. (AR 19.) At step two, the ALJ concluded that Plaintiff
24 "does not have an impairment or combination of impairments that has
25 significantly limited (or is expected to significantly limit) the
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27 ¹ RFC is what a claimant can still do despite existing exertional
28 and nonexertional limitations. 20 C.F.R. § 416.945(a); see Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 ability to perform basic work-related activities for 12 consecutive
2 months; therefore, the claimant does not have a severe impairment or
3 combination of impairments." (AR 19.) Because the ALJ found that
4 Plaintiff did not have a severe impairment, he did not consider steps
5 three through five of the disability determination.

6 The ALJ found that Plaintiff did not have a severe mental
7 impairment because his symptoms were "well-controlled with
8 medication." (AR 20.) Plaintiff does not appear to contest that
9 finding.

10 Next, the ALJ examined whether Plaintiff had any severe physical
11 impairments. The ALJ found that Plaintiff's "history of diabetes
12 mellitus and hypertension" were not severe impairments because "the
13 medical records do not indicate any significant treatment for such
14 impairments." (AR 20.) He noted that while Plaintiff took various
15 medicines for these conditions, he usually had "no new complaints"
16 when he returned to his doctor for refills. (AR 20.) The ALJ noted
17 that Plaintiff stated that Motrin controlled his back pain, and
18 various neurological and musculoskeletal examinations and tests all
19 were normal. (AR 20-21.)

20 The ALJ expressly rejected the opinion of Plaintiff's treating
21 physician, Dr. E.A. Ayodele, who had been Plaintiff's doctor since
22 June 2004 (AR 21) and had last examined him in April 2008 (AR 134).
23 Dr. Ayodele completed an RFC form for Plaintiff. (AR 134-37.) At the
24 conclusion of it, Dr. Ayodele noted the following:

25 Patient has frequent chest pain and frequently complains of
26 dizziness. Patient also said that his nerves are bad. Mom
27 claimed that patient is slow - also had history of seizures
28 in the past.

1 (AR 137.) When asked to identify all "clinical findings and objective
2 signs" supporting his diagnoses of hypertension, angina, and other
3 ailments, Dr. Ayodele wrote, "frequent chest pain, generalized
4 weakness of joints on exam." (AR 134.)

5 The ALJ found that Dr. Ayodele's opinion that Plaintiff had
6 various restrictions on how much he could lift and how long he could
7 sit or stand were "inconsistent with all of the objective clinical and
8 diagnostic findings, which have . . . been given great weight." (AR
9 21.) The ALJ also noted that while Dr. Ayodele stated that Plaintiff
10 could lift up to 10 pounds only occasionally (AR 136), Plaintiff
11 himself stated that he could lift up to 30 pounds (AR 184). (AR 21.)
12 The ALJ gave "significant weight" to the opinion of Dr. Ella Tamayo,
13 the consultative examining doctor, who examined Plaintiff in June 2007
14 and found that he had no significant functional restrictions. (AR 20-
15 21.) Her examination of Plaintiff was "unremarkable." (AR 187.)

16 Plaintiff was tentatively diagnosed with carpal tunnel syndrome
17 by Dr. Ayodele, but tests conducted in November 2007 were completely
18 normal and showed no evidence of that affliction or "other compressive
19 neuropathy." (AR 263-64.)

20 **V. DISCUSSION**

21 Plaintiff contends that the ALJ improperly rejected the opinion
22 of Dr. Ayodele and therefore incorrectly determined that he did not
23 suffer from any severe impairment or combination of impairments. (J.
24 Stip. at 4.)

25 **A. Step two**

26 At step two of the sequential evaluation process, a plaintiff has
27 the burden to present evidence of medical signs, symptoms, and
28 laboratory findings that establish a medically determinable physical

1 or mental impairment that is severe and that can be expected to result
2 in death or last for a continuous period of at least 12 months.
3 Ukolov v. Barnhart, 420 F.3d 1002, 1004-05 (9th Cir. 2005) (citing 42
4 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D));² see 20 C.F.R. § 416.920.
5 Substantial evidence supports an ALJ's determination that a claimant
6 is not disabled at step two when "there are no medical signs or
7 laboratory findings to substantiate the existence of a medically
8 determinable physical or mental impairment." Ukolov, 420 F.3d at
9 1004-05 (citing SSR 96-4p). An impairment may never be found on the
10 basis of the claimant's symptoms alone. Id. at 1005.

11 Step two is "a de minimis screening device [used] to dispose of
12 groundless claims." Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir.
13 1996). Applying the applicable standard of review to the requirements
14 of step two, a court must determine whether an ALJ had substantial
15 evidence to find that the medical evidence clearly established that
16 the claimant did not have a medically severe impairment or combination
17 of impairments. Webb v. Barnhart, 433 F.3d 683, 687 (9th Cir. 2005);
18 see also Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir. 1988) ("Despite
19 the deference usually accorded to the Secretary's application of
20 regulations, numerous appellate courts have imposed a narrow
21 construction upon the severity regulation applied here."). An
22 impairment or combination of impairments can be found "not severe"
23 only if the evidence establishes a slight abnormality that has "no
24 more than a minimal effect on an individual's ability to work." Webb,
25 433 F.3d at 686 (citation omitted).

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27 ² A "medical sign" is "an anatomical, physiological, or
28 psychological abnormality that can be shown by medically acceptable
clinical and laboratory diagnostic techniques." Ukolov, 420 F.3d at
1005.

1 B. Rejection of treating physician's opinion

2 Generally, the opinions of treating physicians are afforded more
3 weight than the opinions of nontreating physicians because treating
4 physicians are employed to cure and have a greater opportunity to know
5 and observe the claimant. Smolen, 80 F.3d at 1285. The weight given
6 a treating physician's opinion depends on whether it was supported by
7 sufficient medical data and was consistent with other evidence in the
8 record. See 20 C.F.R. § 416.927(d)(2). If a treating physician's
9 opinion was well supported by medically acceptable clinical and
10 laboratory diagnostic techniques and was not inconsistent with the
11 other substantial evidence in the record, it should be given
12 controlling weight and should be rejected only for "clear and
13 convincing" reasons. See Lester, 81 F.3d at 830; § 416.927(d)(2).
14 When a treating physician's opinion conflicts with other medical
15 evidence, the ALJ must provide "specific and legitimate reasons" for
16 discounting the treating opinion. Lester, 81 F.3d at 830; Orn v.
17 Astrue, 495 F.3d 625, 632 (9th Cir. 2007). Factors relevant to the
18 evaluation of a treating physician's opinion include the "[l]ength of
19 the treatment relationship and the frequency of examination" as well
20 as the "nature and extent of the treatment relationship" between the
21 patient and the physician. § 416.927(d)(2)(i)-(ii).

22 C. Analysis

23 As the ALJ noted, there appears to be not a single medical sign
24 or laboratory finding in the record demonstrating anything other than
25 normal or minimally abnormal findings. Plaintiff has not pointed to
26 the results of any such tests or examinations. The law is clear that
27 a finding of impairment cannot rest on a plaintiff's subjective
28 symptoms alone.

1 Plaintiff urges the Court to find that the ALJ improperly
2 rejected Dr. Ayodele's diagnosis of severe impairments. Plaintiff
3 cites law for the proposition that a later medical opinion is entitled
4 to more weight than an older one and notes that Dr. Ayodele filled out
5 Plaintiff's RFC form in April 2008 while Dr. Ella-Tamayo conducted her
6 examination of Plaintiff in June 2007. (J. Stip. at 7-8.) But the
7 cases Plaintiff cites do not support his position, because in each of
8 them there was specific medical evidence that the claimant's condition
9 was deteriorating over time. See Stone v. Heckler, 761 F.2d 530, 532
10 (9th Cir. 1985) (rejecting older reports because evidence showed
11 "continuing degenerative changes"); Wier ex rel. Wier v. Heckler, 734
12 F.2d 955, 964 (3d Cir. 1984) (rejecting reliance on stale medical
13 records when evidence showed "appellant's mental development relative
14 to his chronological age has slowed in adolescence"). No such
15 evidence exists here, and therefore there was no reason for the ALJ to
16 discount Dr. Ella-Tamayo's findings. In fact, as the ALJ noted,
17 Plaintiff has by all accounts responded well to treatment.³

18 The ALJ was entitled to credit the finding of examining doctor
19 Ella-Tamayo because it was supported by the doctor's independent
20 clinical findings and thus constituted substantial evidence upon which
21 the ALJ could properly rely to reject Dr. Ayodele's opinion. See
22 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). Any
23 conflict in the properly supported medical-opinion evidence was the
24 sole province of the ALJ to resolve. See Andrews v. Shalala, 53 F.3d

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26 ³ Plaintiff apparently was looking for work after the alleged onset
27 date of his complete disability. (See AR 25 ("11/8/07: Pt investigating
28 job opportunity today UPS.")) Because the ALJ did not rely on this
fact in finding that Plaintiff did not have a severe impairment, the
Court does not do so either. See Orn, 495 F.3d at 630; Connett v.
Barnhart, 340 F.3d 871, 873 (9th Cir. 2003).

1 1035, 1041 (9th Cir. 1995). The ALJ provided three specific and
2 legitimate reasons for rejecting Dr. Ayodele's opinion. Moreover,
3 impairment cannot be based on symptoms alone, and, as the ALJ found,
4 no medical signs or laboratory findings supported Dr. Ayodele's
5 opinion. See Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003)
6 (treating doctor's opinion properly rejected when treatment notes
7 "provide no basis for the functional restrictions he opined should be
8 imposed on [claimant]"). Accordingly, the ALJ did not err in finding
9 that Plaintiff did not have a severe impairment or combination of
10 impairments. Thus, Plaintiff's contentions do not warrant remand.

11 **VI. CONCLUSION**

12 Consistent with the foregoing, and pursuant to sentence four of
13 42 U.S.C. § 405(g),⁴ IT IS ORDERED that judgment be entered AFFIRMING
14 the decision of the Commissioner and dismissing this action with
15 prejudice. IT IS FURTHER ORDERED that the Clerk serve copies of this
16 Order and the Judgment on counsel for both parties.

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19 DATED: January 3, 2012



JEAN P. ROSENBLUTH
U.S. Magistrate Judge

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27 ⁴ This sentence provides: "The [district] court shall have power
28 to enter, upon the pleadings and transcript of the record, a judgment
affirming, modifying, or reversing the decision of the Commissioner of
Social Security, with or without remanding the cause for a rehearing."